



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-126, C-570-127]

#### **Non-Refillable Steel Cylinders from the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders; Water Capacity Between 100 and 299 Cubic Inches**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from Worthington Industries (Worthington), the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of non-refillable steel cylinders (non-refillable cylinders), which have a water capacity between 100 and 299 cubic inches, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on non-refillable cylinders from the People's Republic of China (China).

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4956.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

On April 12, 2023, Worthington filed a circumvention inquiry request alleging that non-refillable cylinders with a water capacity between 100 and 299 cubic inches are circumventing the *Orders*<sup>1</sup> and, accordingly, should be included within the scope of the orders.<sup>2</sup> Worthington

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<sup>1</sup> See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping and Countervailing Duty Orders*, 86 FR 25839 (May 11, 2021) (*Orders*).

<sup>2</sup> See Worthington's Letter, "Request for Circumvention Ruling Pursuant to Sections 781(c) and 781(d) of the Tariff Act of 1930," dated April 12, 2023 (Worthington's Request).

alleges that these non-refillable cylinders constitute merchandise altered in form or appearance in such minor respects that they should be included in within the scope of the *Orders*, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(j). In addition, Worthington alleges that these non-refillable cylinders are later-developed merchandise and should be included within the scope of the *Orders*, pursuant to section 781(d) of the Act and 19 CFR 351.226(k).

#### Scope of the *Orders*

The merchandise covered by these orders is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by these orders.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to these orders is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers non-refillable cylinders with a water capacity between 100 and 299 cubic inches that are produced in China and exported to the United States.

#### Statutory and Regulatory Framework

Section 351.226(d)(1)(ii) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." Worthington alleged circumvention pursuant to section 781(c) of the Act (merchandise altered in form or appearance in minor respects) and section 781(d) of the Act (merchandise developed after an investigation is initiated).

Section 781(c)(1) of the Act provides that the class or kind of merchandise subject to an AD or CVD order shall include articles that have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification." Section 781(c)(2) of the Act provides an exception that section 781(c)(1) of the Act "shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}." Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce may consider criteria including, but not limited to: (1) Overall physical characteristics of the merchandise; (2) expectations of ultimate users; (3) use of the merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.

Section 781(d) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise is developed after an investigation is initiated. In conducting a later-developed merchandise inquiry under section 781(d)(1) of the Act and 19 CFR 351.226(k), Commerce will consider whether: (1) The later-developed merchandise has the same general

physical characteristics as the merchandise with respect to which the order was originally issued; (2) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product; (3) the ultimate use of the earlier product and the later-developed merchandise are the same; (4) the later-developed merchandise is sold through the same channels of trade as the earlier product; and (5) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.<sup>3</sup> First, however, Commerce determines whether the merchandise subject to the inquiry was commercially available at the time of the initiation of the underlying LTFV or CVD investigation (*i.e.*, the product was present in the commercial market or the product was tested and ready for commercial production).<sup>4</sup>

For companion AD and CVD proceedings, “the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.”<sup>5</sup> Further, “{o}nce the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.”<sup>6</sup> Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

### Analysis

After analyzing the record evidence and Worthington's allegation, we determine that there is sufficient information to warrant initiation of a circumvention inquiry based on both allegations: (1) Minor alterations, pursuant to section 781(c) of the Act and 19 CFR 351.226(j); and (2) later-developed merchandise, pursuant to section 781(d) of the Act and 19 CFR 351.226(k). For a full discussion of the basis for our decision to initiate a circumvention inquiry

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<sup>3</sup> See section 781(d)(1) of the Act.

<sup>4</sup> See 19 CFR 351.226(k).

<sup>5</sup> See 19 CFR 351.226(m)(2).

<sup>6</sup> *Id.*

regarding both the later-developed merchandise and minor alterations allegations, *see* the Initiation Checklist.<sup>7</sup>

The information provided by Worthington also warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, when the facts warranted initiation on a country-wide basis.<sup>8</sup>

Commerce intends to establish a schedule for questionnaires and comments on the issues related to this inquiry. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

#### Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rates that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue a preliminary or final circumvention determination, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

#### Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(c) and (d) of the Act, Commerce determines that Worthington's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether U.S. imports of non-refillable cylinders with a water capacity between 100 and 299 cubic inches produced in, and exported from, China are

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<sup>7</sup> See Circumvention Initiation Checklist, "Non-Refillable Steel Cylinders from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Initiation Checklist).

<sup>8</sup> See, e.g., *Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 FR 4630 (July 26, 2017), and accompanying Issues and Decision Memorandum at Comment 4.

circumventing the *Orders*. We included a description of the products that are subject to the circumvention inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry, in the accompanying Initiation Checklist.<sup>9</sup> In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination in this circumvention proceeding no later than 150 days from the date of publication of this notice in the *Federal Register*.

This notice is published in accordance with sections 781(c) and (d) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: May 25, 2023.

**Lisa W. Wang,**  
*Assistant Secretary*  
*for Enforcement and Compliance.*

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<sup>9</sup> See Initiation Checklist.